

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

DOROTHY A. RECARDE,

ROBIN L. MARCELLO, in her capacity
as Chester County (Pa.) Clerk of Court,

Defendants.

Civil No. _____

COMPLAINT

Plaintiff, the United States of America, a delegate of the Secretary of the Treasury, and at the direction of the Attorney General, at the request and with the authorization of the Chief Counsel of the Internal Revenue Service, brings this action to obtain: (a) an order declaring as null, void, and without legal effect the "Commercial Lien," "Notice of Fault and Opportunity to Cure," and "Certificate of Non-Response - Notice of Default," and any subsequently filed or related documents, that defendant Dorothy A. Recarde filed in the Chester County Court of Commons Pleas on March 31, 2014 and on April 14, 2014 against Zachary L. McNichol; Fredrick P. Henrich, President - Coatesville Savings Bank; and John F. McKenna, Legal Counsel - Coatesville Savings Bank; and (b) an order enjoining defendant Recarde from all future filings of similar instruments.

JURISDICTION & VENUE

1. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1340 and 1345, and 26 U.S.C. § 7402.

2. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b)(2).

PARTIES

3. Plaintiff is the United States of America.

4. Defendant Dorothy A. Recarde is a natural person who, upon information and belief, currently resides within this judicial district. Defendant Recarde is President of Summerbeam Woodworking, Inc. ("Summerbeam"), a business located in Kirkwood, Pennsylvania.

5. Defendant Robin L. Marcello is currently the Chester County Clerk and maintains her principal place of business in Chester, Pennsylvania within this judicial district. Ms. Marcello is sued solely in her official capacity for the purpose of obtaining the requested relief of indexing a judicial order that the "Commercial Lien," "Notice of Fault and Opportunity to Cure," and "Certificate of Non-Response - Notice of Default" filed by Recarde are null, void, and without legal effect. No damages, costs, or fees are being sought against Ms. Marcello by this action.

CLAIM FOR RELIEF

6. On or about March 31, 2014, defendant Recarde caused to be filed in the public records of the Clerk of Chester County, Pennsylvania a document entitled "Commercial Lien" against Zachary L. McNichol, Frederick P. Henrich, and John F.

McKenna. Defendant Recarde attached ten "Supporting Documents" to the "Commercial Lien." (A true and correct copy these documents are attached as Exhibit 1.)

7. On April 14, 2014, defendant Recarde filed an "Addendum" to the Commercial Lien, a "Notice of Fault and Opportunity to Cure," and "Certificate of Non-Response - Notice of Default." (A true and correct copy these documents are attached as Exhibit 2.)

8. At all times mentioned herein, McNichol was a Revenue Officer of the Internal Revenue Service in Lancaster, Pennsylvania, and was acting within the course and scope of his employment as a Federal employee.

9. Summerbeam failed to pay over to the United States employment taxes it collected from its workers wages during the quarterly periods ending June 30, 2008, September 30, 2008, December 31, 2008, December 31, 2010, and March 31, 2011.

10. In an attempt to collect Summerbeam's unpaid tax liabilities, (referred to in paragraph 4, above), on January 23, 2014, February 21, 2014, and April 4, 2014, Officer McNichol issued Notices of Levy upon Summerbeam's corporate bank account to Coatesville Savings Bank in Coatesville, Pennsylvania. Coatesville Svings Bank complied with the United States' levies by remitting funds out of Summerbeam's corporate bank account over to the IRS as follows, which partially paid Summerbeam's tax liability.

11. As a result of the IRS's collection activity, defendant Recarde filed, in Chester County Court at Docket Number 2013-02694 , the "Commercial Lien," "Notice of Fault and Opportunity to Cure," and "Certificate of Non-Response - Notice of Default," and related documents, against Officer McNichol; and Messrs. Henrich and McKenna.

12. The documents Recarde filed, attached as Exhibits 1 and 2, were filed in retaliation against Officer McNichol for acts performed by him as part of his official duties, under his authority as an officer or under the direction of officers of the United States, and in retaliation against Messrs. Henrich and McKenna for causing Coatesville Savings Bank to comply with the United States' levies.

14. The documents Recarde filed, attached as Exhibits 1 and 2, lack any legal basis whatsoever and are specifically calculated to cause substantial interference with the enforcement of the laws of the United States pertaining to the internal revenue, and to molest, interrupt, hinder or impede an employee or officer of the United States who was in good faith performing his official duties, and to impede future compliance with the United States' levies by Coatesville Savings Bank, or by its officers, employees, attorneys, or agents.

15. Defendant Recarde's filings are without any legal basis, and are solely designed to harass a Federal officer and employee in the performance of his official duties, and to harass the Bank's President and its attorney due to the bank's compliance

with the United States' attempts to collect the Summerbeam's unpaid tax liabilities.

Thus, Recarde's filings impose an immediate and irreparable harm.

16. Defendant Recarde's filings impose an immediate and irreparable injury upon the United States by impeding, obstructing and impairing the execution of the official duties of its employees and officers.

17. The public interest will be served by an order declaring the "Commercial Lien," "Supporting Documents," the "Addendum" to the Commercial Lien, the "Notice of Fault and Opportunity to Cure," and "Certificate of Non-Response - Notice of Default, and any subsequently filed or related documents, to be null and void; and permanently enjoining defendant Recarde and all those in active concert or participation with her from filing, or attempting to file, any document or instrument which purports to create a "Commercial Lien," a "Notice of Fault and Opportunity to Cure," or a "Certificate of Non-Response - Notice of Default," or any other similar judicial order or purported judgment which has the effect of interfering with federal tax administration against the person or property of any Federal officer or employee or against Coatesville Savings Bank, its officers, employees, attorneys, or agents.

WHEREFORE, the United States of America prays that this Court:

A. Determine, adjudge and declare that the "Commercial Lien" and "Supporting Documents" filed on March 31, 2014 (and attached as Ex. 1), and the "Addendum" to the Commercial Lien, the "Notice of Fault and Opportunity to Cure," and "Certificate of Non-Response - Notice of Default," filed on April 14, 2014 (attached

as Ex. 2), and any subsequently filed documents, filed by defendant Dorothy A. Recarde against Zachary McNichol, Frederick P. Henrich, and John F. McKenna, to be null, void and of no legal effect;

B. Permanently enjoin defendant Dorothy A. Recarde, her agents, and all others in active concert or participation with her from filing, or attempting to file, any document or instrument which purports to create a commercial lien or judgment against the person or property of any employee or officer of the United States, or against any other person or entity, including Coatesville Savings Bank, or by its officers, employees, attorneys, or agents, that would have the effect of impeding compliance with federal tax administration.

C. Award the United States its costs and reasonable attorneys' fees incurred in this action; and

D. Grant such other and further relief as the Court deems to be just and proper.

Dated: May 8, 2014.

ZANE DAVID MEMEGER
United States Attorney

KATHRYN KENEALLY
Assistant Attorney General
Tax Division

/s/ Thomas J. Jaworski
Thomas J. Jaworski
Trial Attorney, Tax Division
U.S. Department of Justice
P.O. Box 227
Washington, DC 20044
Telephone: (202) 307-6390
Facsimile: (202) 514-6866
E-Mail: Thomas.J.Jaworski@usdoj.gov
Signature Validation Code: TJJ9067